A **MUHAMMAD KIN EEZAZ ABDULLAH**

v.

PP

B COURT OF APPEAL, PUTRAJAYA
RAUS SHARIF PCA
AZIAH ALI JCA
HAMID SULTAN ABU BACKER JCA
[CRIMINAL APPEAL NO: W-09-252-09-2013]
C 5 MAY 2014
[2014] CLJ JT(5)

CRIMINAL PROCEDURE: *Appeal - Appeal against acquittal - Appeal against order of acquittal by Sessions Court - High Court ordering*
D *appellant to enter defence before Sessions Court - Whether decision thereof appealable - Whether within ambit and scope of s. 316 Criminal Procedure Code - Whether constitutional - Criminal Procedure Code, ss. 2, 316 - Code of Criminal Procedure Act 1973 (India), s. 386 - Courts of Judicature Act 1964, s. 3*

E ***STATUTORY INTERPRETATION:*** *Construction of statutes - Criminal Procedure Code - Section 316 - Decision on appeal - Appeal against order of acquittal by Sessions Court - High Court ordering appellant to enter defence - Whether High Court could remit case for*
F *continued trial*

WORDS & PHRASES: *"retrial" (re-tried) - Criminal Procedure Code, s. 316 - Meaning and purport - Whether connoting 'de novo' trial - Whether could mean continuation or completion of original trial*

G ***WORDS & PHRASES:*** *"direct and further inquiry" - Criminal Procedure Code, s. 316 - Whether empowering High Court hearing an appeal against an order of acquittal to order for defence to be called*

The appellant in this case was acquitted by the Sessions Court
H on two charges under s. 471 of the Penal Code. On appeal, the High Court ruled that the Sessions Court Judge was in error in finding that no *prima facie* case had been proved against the appellant, and in the event, in exercise of its appellate powers under s. 316 of the Criminal Procedure Code ('CPC'), reversed
I the order of acquittal and ordered that the appellant enter his defence on the two charges. The appellant appealed and argued

that the High Court Judge, in ruling the way he did, was re-writing the provisions of s. 316(a) of the CPC, and that s. 316 did not in any way clothe the judge with the powers to remit the case for continued trial at the defence stage. Section 316 of the CPC, according to the appellant, only allowed two consequential orders upon reversing an acquittal, namely to order for further inquiries and for a re-trial of the accused. This aside, it was further argued that the impugned decision was unconstitutional having curtailed the appellant's right to liberty. The prosecution retorted that the decision of the High Court Judge was non-appealable, citing in support thereof the authorities of *Saad Abas & Anor v. PP*, *PP v. Letchumanan Suppiah* and *Dato' Seri Anwar Ibrahim v. PP*. The issue that arose was whether a criminal court, hearing an appeal, could remit the matter to the trial court for continuation of the trial at the defence stage.

Held (dismissing appeal)
Per Raus Sharif PCA delivering the judgment of the court:

(1) As can be gleaned from the provisions of s. 316 of the CPC and s. 386 of the Indian Code of Criminal Procedure Act 1973, in an appeal against an order of acquittal, the appellate court may reverse such order and direct that further inquiry be made or that the accused be re-tried, as the case may be, or impose a sentence upon him according to law. (para 14)

(2) The line of arguments advanced by the appellant was misconceived. What the High Court Judge did was something which was permitted under s. 316 of the Indian Code of Criminal Procedure Act 1973. As was said by authors of *Ratanlal & Dhirajlal on The Code of Criminal Procedure* when examining the word 'retrial' in s. 386 of the Indian CPC "The expression 'retrial' should not be given a rigid connotation as '*de novo*' trial. Retrial could also mean continuation or completion of the original trial. Such retrial can be ordered under this section". Therefore, the High Court Judge in ordering the accused to enter his defence before the Sessions Court had actually adhered to and acted within the confines of s. 316. (paras 16 & 17)

(3) In addition, the phrase 'direct that further inquiry be made' in s. 316(a) was sufficient to order the defence to be called, as 'defence stage' is a trial process where the trial court is obliged to make 'further inquiry' for purposes of acquittal or conviction. The word 'inquiry' under s. 2 of the CPC which

means "includes every inquiry conducted under the code before a Magistrate" will not necessarily apply to the phrase 'further inquiry' in s. 316(a) of the CPC. Further, it is well-established that no limitations can be placed on the powers of the appellate court under s. 316 of the CPC. (para 18)

(4) The orders of the High Court Judge in setting aside the acquittal and ordering the appellant to enter his defence was not appealable as it would be premature at this stage to question whether the decision for calling the appellant to enter for his defence was right or wrong. The proceeding must continue until the end of the case for the defence and only then would the court be able to finally decide the fate of the appellant. (para 22)

Bahasa Malaysia *Translation Of Headnotes*

Perayu di sini telah dibebaskan oleh Mahkamah Sesyen atas dua pertuduhan di bawah s. 471 Kanun Keseksaan. Di peringkat rayuan, Mahkamah Tinggi memutuskan bahawa hakim Mahkamah Sesyen khilaf apabila mendapati bahawa tiada kes *prima facie* dibuktikan terhadap perayu, dan ekoran itu, dalam melaksanakan kuasa-kuasa rayuannya di bawah s. 316 Kanun Tatacara Jenayah ('KTJ'), telah mengakas perintah pembebasan dan memerintahkan supaya perayu memasukkan pembelaannya kepada dua pertuduhan tersebut. Perayu merayu dan berhujah bahawa hakim Mahkamah Tinggi, dalam membuat perintah yang dibuatnya, telah menulis semula s. 316(a) KTJ dan bahawa s. 316 sama sekali tidak memberikan hakim kuasa untuk menghantar balik kes untuk sambung bicara di peringkat pembelaan. Seksyen 316, menurut perayu, hanya membenarkan dua perintah susulan dibuat apabila perintah pembebasan diakas, iaitu perintah untuk siasatan lanjut dan perintah supaya tertuduh dibicarakan semula. Selain itu, ianya turut dihujahkan bahawa keputusan yang dicabar tidak berperlembagaan kerana telah menyekat hak kebebasan perayu. Pendakwaan berhujah bahawa keputusan yang arif hakim Mahkamah Tinggi adalah tidak boleh dirayui, berdasarkan autoriti-autoriti *Saad Abas & Anor v. PP*, *PP v. Letchumanan Suppiah* dan *Dato' Seri Anwar Ibrahim v. PP*. Isu yang berbangkit adalah sama ada sebuah mahkamah jenayah yang mendengar rayuan boleh mengembalikan halperkara ke mahkamah bicara untuk tujuan sambung bicara di peringkat pembelaan.

Diputuskan (menolak rayuan)
Oleh Raus Sharif PMR menyampaikan penghakiman mahkamah:

(1) Sebagaimana yang boleh dilihat dari peruntukan-peruntukan s. 316 KTJ dan s. 386 Kanun Tatacara Jenayah India, dalam sesuatu rayuan terhadap perintah pembebasan, mahkamah di peringkat rayuan boleh mengakas perintah tersebut dan memerintahkan siasatan lanjut dibuat atau supaya tertuduh dibicara semula atau menjatuhkan hukuman ke atasnya menurut undang-undang.

(2) Rangkaian hujah yang dikemukakan oleh perayu adalah tersasul. Apa yang dibuat oleh hakim Mahkamah Tinggi adalah sesuatu yang diizinkan oleh s. 316 KTJ. Seperti yang dikatakan oleh penulis buku *Ratanlal & Dhirajlal on The Code of Criminal Procedure* semasa meneliti perkataan 'perbicaraan semula' di dalam s. 386 KTJ India "Ekpresi 'perbicaraan semula' tidak harus diberikan konotasi yang ketat seperti perbicaraan '*de novo*'. Perbicaraan semula boleh juga bermaksud penyambungan atau penyudahan perbicaraan asal. Perbicaraan semula sedemikian boleh diperintahkan di bawah seksyen ini". Ianya dengan itu mengikut bahawa hakim bicara dalam memerintahkan tertuduh memasukkan pembelaannya di hadapan Mahkamah Sesyen telah sebenarnya mengikuti dan bertindak di dalam ruang litup s. 316.

(3) Selain itu, frasa 'mengarahkan bahawa siasatan lanjut dibuat' di dalam s. 316(a) adalah memadai untuk memerintahkan pembelaan dipanggil, kerana 'peringkat pembelaan' adalah satu proses perbicaraan di mana mahkamah bicara dikehendaki membuat 'siasatan lanjut' bagi maksud pembebasan ataupun sabitan. Perkataan 'siasatan' di bawah s. 2 KTJ yang bermaksud "termasuk apa-apa siasatan di hadapan Majistret yang dibuat di bawah kanun" tidak semestinya terpakai terhadap frasa 'siasatan lanjut' di dalam s. 316(a) KTJ.

(4) Perintah hakim Mahkamah Tinggi dalam mengenepikan pembebasan dan memerintahkan perayu supaya memasukkan pembelaannya tidak boleh dirayui kerana di peringkat ini adalah pramatang untuk mempersoalkan sama ada keputusan memanggil perayu untuk membela diri itu betul ataupun salah. Prosiding harus diteruskan sehingga ke akhir kes pembelaan dan hanya di peringkat tersebut mahkamah boleh memutuskan secara muktamad nasib perayu.

Case(s) referred to:
Dato' Seri Anwar Ibrahim v. PP [1999] 1 CLJ 537 CA ***(refd)***
Dato' Seri Anwar Ibrahim v. PP [2011] 7 CLJ 253 CA ***(refd)***
Lakshmanan Sundaram v. State of Kerala [1990] Cr LJ 1800 ***(refd)***
PP v. Letchumanan Suppiah [2009] 5 CLJ 652 FC ***(foll)***
Saad Abas & Anor v. PP [1998] 4 CLJ 575 CA ***(refd)***
Sallehuddin Yahya v. PP [1978] 1 LNS 176 HC ***(refd)***
Sheo Swarup v. King-Emperor AIR 1934 PC 227 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 3, 50(2)
Criminal Procedure Code, ss. 2, 316(a)
Penal Code, s. 471

Code of Criminal Procedure Act 1973 [Ind], s. 386

Other source(s) referred to:
Janab's Key to Criminal Procedure and Evidence, 2nd edn, p 462

For the appellant - Haniff Khatri (Mai Latulnadia Badawi with him); M/s Haniff Khatri
For the prosecution - Viknesvaran, DPP

[Appeal from High Court, Kuala Lumpur; Criminal Appeal No: 42(S)-69-05-2012]

Reported by Wan Sharif Ahmad

JUDGMENT

Raus Sharif PCA:

Introduction

[1] The appellant was charged before the Sessions Court with two charges under s. 471 of the Penal Code. The charges read as follows:

> Arrest Case 62-503-2011 (1st Charge)
>
> Bahawa kamu di antara 13hb Mei 2010 sehingga 7hb Jun 2010 di Perbadanan Harta Intelek Malaysia, Aras 32 Menara Dayabumi, Jalan Sultan Hishamuddin dalam Bandaraya Kuala Lumpur di Wilayah Persekutuan dengan curangnya telah menggunakan sebagai tulin satu dokumen iaitu "Surat Permohonan Meluluskan Proses Permohonan Pendaftaran Harta Intelek" untuk tujuan kelulusan dan mempercepatkan proses permohonan kamu untuk mendaftar

harta intelek yang mana kamu mempunyai sebab untuk mempercayai bahawa dokumen tersebut adalah palsu dan oleh itu kamu telah melakukan kesalahan di bawah Seksyen 471 Kanun Keseksaan yang boleh dihukum di bawah seksyen 465 Kanun Keseksaan.

Arrest Case 62-513-2011 (2nd Charge)

Bahawa kamu pada 5hb Mei 2010 di Bahagian Perlesenan, Ibu Pejabat Jabatan Pengangkutan Jalan, Aras 2, Blok D4, Kompleks D, Pusat Pentadbiran Kerajaan Persekutuan dalam Wilayah Persekutuan Putrajaya dengan curangnya telah menggunakan sebagai tulin satu dokumen iaitu "Surat Permohonan Melanjutkan Pendaftaran Nombor Kenderaan dan Pertukaran Nama" untuk tujuan perlanjutan tempoh masa pendaftaran nombor kenderaan PJL 777, PJL 44, PJL 444 dan PJL 4444 dan pertukaran nama di atas nombor-nombor tersebut dari Low Wai Kin ke Muhammad Kin Eezaz bin Abdullah Tengku Ampuan Bahriya yang mana kamu mempunyai sebab untuk mempercayai bahawa dokumen tersebut adalah palsu dan oleh itu kamu telah melakukan di bawah seksyen 471 Kanun Keseksaan yang boleh dihukum di bawah seksyen 465 Kanun Keseksaan.

[2] On 2 May 2012 the Sessions Court at the end of the prosecution's case acquitted and discharged the appellant on both charges. The Sessions Court found that the prosecution had failed to establish a *prima facie* case against the appellant on both charges.

[3] The Public Prosecutor appealed against the said decision. On 4 September 2013 the High Court allowed the appeal. The Sessions Court's order of acquittal was reversed and the appellant was ordered to enter for his defence on both of the charges. The case was sent back to the Sessions Court for continuation of the trial at the defence stage.

[4] Hence, this appeal before this court. On 2 December 2013 we dismissed the appeal. We now give our reasons.

Submissions

[5] At the outset of the hearing of this appeal the learned Deputy Public Prosecutor had raised a preliminary objection that the decision of the High Court in ordering the appellant to enter his defence at the Sessions Court is not appealable. In support of this proposition he referred to us the cases of *Saad Abas & Anor v.*

A *PP* [1998] 4 CLJ 575; *PP v. Letchumanan Suppiah* [2009] 5 CLJ 652; *Dato' Seri Anwar Ibrahim v. PP* [1999] 1 CLJ 537 and *Dato' Seri Anwar Ibrahim v. PP* [2011] 7 CLJ 253; [2011] 5 MLJ 535.

[6] Learned counsel for the appellant candidly informed us that
B he was aware of those cases. But it was pointed out that none of those cases had really addressed the propriety or lawfulness of the consequential order upon reversal of the acquittal in sending the matter down to the trial court to be continued at the defence stage. According to learned counsel the strict provisions of
C s. 316(a) of the Criminal Procedure Code ("CPC"), governing the powers of the court in hearing appeals were not considered in those decisions. In short what he is trying to say is that the earlier decided cases *albeit* being apex court decisions, did not properly addressed the lawfulness or propriety of s. 316 of the CPC.

D **[7]** On the issue of lawfulness and propriety of s. 316 of the CPC, learned counsel laid emphasis that the High Court in hearing an appeal against acquittal can only order the following:

(i) reverse the order of acquittal and direct further enquiries be
E made; or

(ii) order that the accused be retried; or

(iii) find him guilty and pass sentence on him according to law.

F **[8]** Learned counsel confined his submissions to item (i) and (ii) as item (iii) is not applicable to the case at hand as it only applies to cases in which the appeal is after the decision at the end of the defence case.

G **[9]** Learned counsel vehemently argued that in the present case there are only two consequential orders the learned judge can pass upon reversal of acquittal and none of these involve the power to remit the matter back for continued trial at the defence stage. Learned counsel submitted that the power to remit the matter back
H to the trial court for defence to be called is something not provided for by the legislators and the learned judge by doing so was guilty of rewriting the provisions of s. 316(a) of the CPC which is crystal clear on this point.

I

[10] Learned counsel also raised the issue of whether the decision of a High Court in reversing an order of acquittal is appealable. In this regard learned counsel submitted that the High Court order in reversing the acquittal is appealable as it falls within the category of "judgment, sentence or order and not a ruling made in the course of a trial" as envisaged under s. 3 of the Courts of Judicature Act 1964 ("CJA").

[11] The final point raised by the learned counsel centres on constitutional issues. This aspect of the submission is better highlighted by quoting the exact words employed by learned counsel in the written submission which is somewhere along these lines:

> ... when the Sessions Court granted an acquittal to the Appellant, the Appellant was granted his liberty, ie, acquittal/innocent from all charges. That decision provided the Appellant with relief of his liberty, which is thereafter guaranteed under Article 5. So, when the High Court reversed the acquittal, the High Court effectively took away the liberty of the appellant of being innocent. Surely, this decision of reversing the acquittal constitutionally touches the appellant's right to liberty, which he should then be allowed to restore by appealing against the High Court decision. Why should the appellant be forced to go through the rigors of proving his innocence by calling necessary witnesses and adducing sufficient evidence, when in fact the High Court Judge may have been in error. Shouldn't this Honorable Court consider that by depriving the right of appeal at this stage, purely on the previous decision of s. 50 and s. 3 of CJA, would curtail the appellant's fundamental right to liberty, in the event the High Court was wrong.

Findings

[12] The main issue before us is whether a court hearing an appeal can order for the matter to be remitted back to the trial court to proceed with the defence case. In order to do so, we have to first examine the provisions of s. 316(a) of the CPC which read as follows:

> 316. At the hearing of the appeal the Judge may, if he considers there is no sufficient ground in interfering, dismiss the appeal, or may:
>
> (a) in an appeal from an order of acquittal, reverse the order, and direct that further inquiry be made, or that the accused be re-tired, as the case may be, or find him guilty and pass sentence on him according to law;

[13] Section 316 of the CPC corresponds with s. 386 of the Indian Code of Criminal Procedure Act 1973 (see case of *Sallehuddin bin Yahya v. Public Prosecutor* [1978] 1 LNS 176; [1979] 2 MLJ 138). The aforesaid provisions of s. 386 read thus:

> 386. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 and section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may:
>
> (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

[14] As can be gleaned from the above provisions of s. 316 of the CPC and the corresponding s. 386 of the Indian Code of Criminal Procedure Act 1973, in an appeal against an order of acquittal the appellate court may reverse such order and direct that further inquiry be made or that the accused be re-tried, as the case may be or impose a sentence upon him according to law.

[15] In the instant case the High Court in exercising its appellate powers under s. 316 of the CPC had reversed the order of acquittal of the Sessions Court and ordered the appellant to enter for his defence. The learned High Court Judge found that the ingredients of the offences had been made out by the prosecution and that the learned Sessions Judge was in error when she found that a *prima facie* case had not been made against the appellant.

[16] What, therefore, needs to be examined in the light of s. 316 of the CPC is whether the view taken by the High Court in the instant case in setting aside the acquittal as ordered by the Sessions Court and ordering the appellant to enter for his defence was a reasonably possible view and thus permitted under s. 316 of the CPC. We have deliberated on the issue raised by learned counsel for the appellant and with respect we find the line of arguments advanced by him is clearly misconceived. We are of the view that what the learned High Court Judge did was something which is permitted under s. 316 of the CPC. As an authority for this proposition we quote an excerpt from the text book entitled "*Ratanlal & Dhirajlal On The Code of Criminal Procedure*" 16th edn.

2002. The eminent authors in examining the word "retrial" as appears in s. 386 of the Indian Code of Criminal Procedure Act 1973 had this to say:

> The word retrial used in this section includes limited retrial and retrial from the stage at which the error or illegality crept in and it can be restricted even to hearing. (see *Kittunni Subramaniam v. Kunhumom* 1974 Cr LJ 548 (Ker). There is nothing in the section to indicate *de novo* trial in all cases irrespective of the circumstances of the case accused should be subjected to *de novo* trial once the appellate court comes to the conclusion that justice requires retrial. It is for that Court to consider whether it should be completely *de novo* trial or continuance or completion of the trial already commenced. Retrial does not necessarily mean fresh trial and when retrial is ordered it does not mean there is to be a *de novo* trial from the very beginning and it depends on the facts and circumstances of the case as from what stage retrial could be ordered to be conducted. (Ref *Lakshmanan Sundaram v. State of Kerala* [1990] Cr LJ 1800). In ordinary parlance retrial only connotes a person being tried once again. Such trial may be from its very inception or it may be from a particular stage. *The expression "retrial" should not be given a rigid connotation as "de novo" trial. There is nothing in the provisions of the Code to warrant the view that retrial necessarily means de novo trial. Even when partial retrial is held that amounts to accused being tried again. Retrial could also mean continuation or completion of the original trial. Such retrial can be ordered under this section*. (emphasis added)

[17] Keeping in view of what has been discussed by the eminent authors on the powers of the court to order a retrial under in s. 386 of the Indian Code of Criminal Procedure Act 1973 which corresponds with our s. 316 of the CPC, we find that the learned High Court Judge in ordering the accused to enter for his defence before the Sessions Court had actually adhered to and acted within the confines of s. 316. We accept the learned authors' view as cited above in the preceding paragraph that the expression "retrial" should not be given a rigid connotation as "*de novo*" trial. There is nothing in the provisions of the CPC to warrant the view that retrial necessarily means *de novo* trial. And a retrial could also mean continuation or completion of the original trial. Thus, we do not find any irregularity that warrants intervention by us on the decision by the High Court in remitting the case to the Sessions Court for continuation of the trial at the defence stage. In our judgment the learned High Court Judge did not err in remitting back the case

to be retried at the defence stage as we have said earlier this is something which is permitted under s. 316 of the CPC. Therefore, we find no strength in the submission of the learned counsel made above, for the primary reason that there is no such specific restriction, as is being made out under s. 316 of the CPC in remitting the case for defence to be called before the Sessions Court.

[18] In addition, we are of the considered view the phrase "direct that further inquiry be made" in s. 316(a) is sufficient to order the defence to be called as "defence stage" is a trial process where the trial court is obliged to make "further inquiry" for purposes of acquittal or conviction. The word "inquiry" under s. 2 of the CPC which means "includes every inquiry conducted under the code before a Magistrate" will not necessarily apply to the phrase "further inquiry" in s. 316(a) of the CPC. Support for the proposition is found in a number of cases. (See *Lakshmanan Sundaram v. State of Kerala* [1990] Cr LJ 1800). Further, it is well established that no limitations can be placed on the powers of the appellate court under this s. 316 of the CPC. In the commentary to s. 316 of the CPC, the author of *Jʃanab's Key to Criminal Procedure and Evidence*, 2nd edn. at p. 462 say:

> Where the appeal is in respect of conviction or sentence the appellate court may reverse the finding and sentence and acquit or discharge the accused or order retrial or commit him for trial or maintain, reduce or enhance the sentence or alter the nature of the sentence. Where the appeal is in respect of any other order the court may alter or reverse such order. No limitations can be placed on the powers of the appellate court under this section. However, in exercising the power the court must give proper weight and consideration to such matters as the views of the trial judge on the credibility of the witnesses; the presumption of innocence in favor of the accused; the right of the accused to the benefit of any doubt; and the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. [See *Lim Kheak Teong v. PP* [1985] 1 MLJ 38 (FC)].

[19] Support for the above proposition is also found in the Privy Council decision of *Sheo Swarup v. King-Emperor* AIR 1934 PC 227, where the Privy Council dealing with a similar provision such as s. 316(a) held that:

> It cannot be said that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has "obstinately blundered", or has "through incompetence, stupidity or perversity" reached such "distorted conclusion as to produce a positive miscarriage of justice", or has in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice or has been tricked by the defence so as to produce a similar result.

[20] Now, yet another question that was raised by learned counsel for the appellant which begs for our consideration is whether the order of the High Court judge in the instant case is appealable. Learned counsel for the appellant submitted that when the High Court reversed the acquittal, the High Court effectively took away the liberty of the appellant of being innocent. According to him this decision of reversing the acquittal constitutionally touches the appellant's right to liberty, which he should then be allowed to restore by appealing against the High Court decision. In short he is inviting us to depart from the earlier decisions in the cases of *Saad Abas & Anor v. PP* [1998] 4 CLJ 575 and *PP v. Letchumanan Suppiah* [2009] 5 CLJ 652.

[21] With respect, we would decline the invitation by learned counsel to depart from this well settled stance. In fact we feel duty bound to bring to learned counsel's attention the decision of this court in the case of *Saad Abas & Anor v. PP* [1998] 4 CLJ 575 which aptly summarises the legal position on this matter. In that case, *Saad Abas & Anor* were jointly tried before the Magistrates' Court and at the close of prosecution's case, they were acquitted and discharged by the magistrate. On appeal to the High Court, the decision of the magistrate was reversed and the High Court directed them to enter upon their defence. They applied for leave to appeal to the Court of Appeal under s. 50(2) of the CJA against the order of the High Court. The application was dismissed by the Court of Appeal. In dismissing the application, Lamin PCA stated:

> A complete criminal trial involves both the case for the prosecution and the case for the defence. This is implied from the very charge itself. A charge accuses a person of having committed an offence. That suggests that he has to put up defence. The moment the prosecution has proved its case meaning that the court has decided that there is a case for the accused to answer, the accused must therefore forthwith enter his defence. So it

A would be premature to question whether the decision calling for the accused to enter his defence was right or wrong. The proceedings must continue until the end of the case for the defence and only then would the court be able to finally decide the fate of the accused. On the other hand, if he is acquitted at the end of the case for the prosecution, that means that the court B has decided the fate of the accused and that as far as that court is concerned, the accused is a free man. Similarly, when a High Court judge rules at the end of an appeal by the prosecutor in a case where the accused has been acquitted at the end of prosecution case that the accused must enter his defence, it is as C good as saying that the sessions court judge himself has decided to call for the defence assuming that he has analysed the case in the way that the High Court judge has done. Only after he has heard the defence can he finally decide the fate of the accused.

D **[22]** We would respectfully adopt the reasoning in the authority cited above to our present case. In our judgment the orders of the learned High Court Judge in setting aside the acquittal and ordering the appellant to enter for his defence is not appealable as it would be premature at this stage to question whether the decision for calling the appellant to enter for his defence was right E or wrong. The proceedings must continue until the end of the case for the defence and only then would the court be able to finally decide the fate of the appellant. Assuming even if the appellant was to be found guilty and then convicted in the Sessions Court, he would still have his right to appeal to the High Court and further F to the Court of Appeal. At the Court of Appeal he is still at liberty to argue on the order of the High Court in ordering for his defence to be called.

[23] In the circumstances, we find no merit in the contentions G espoused by learned counsel for the appellant in support of this appeal. By reason thereof the appeal being devoid of any merits stands dismissed.

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